

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58625; File No. SR-Amex-2008-51)

September 23, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Thereto Related to Amendments to Rule 991 (Communications to Customers) and Rule 921 (Opening of Accounts)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 25, 2008, the American Stock Exchange LLC (the “Amex” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. Amex filed Amendment Nos. 1 and 2 to the proposed rule change on August 22, 2008, and September 5, 2008, respectively.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 991 (“Communications to Customers”) to delete references to certain provisions of the Securities Act of 1933 (the “Securities Act”) that no longer apply to standardized options⁴ issued by registered clearing agencies and update and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment Nos. 1 and 2 modified certain definitions in and made non-substantive corrections to proposed Rule 991.

⁴ “Standardized Option” is defined in Rule 19b-1 under the Exchange Act to mean options contracts trading on a registered national securities exchange, an automated quotation system of a registered national securities association, or a foreign exchange which relate to options classes the terms of which are limited to specific expiration dates and exercise prices, or such other securities as the Commission may, by order, designate.

reorganize the rule for greater clarity. In addition, the proposal seeks to amend Amex Rule 921 (“Opening of Account”) in connection with the information member organizations must obtain from customers. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room and <http://www.amex.com>.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

a. Rule 991 (Communications to Customers)

On December 23, 2002, the Commission published final rules that exempt standardized options issued by registered clearing agencies and traded on a registered national securities exchange or registered national securities association from the Securities Act (other than the anti-fraud provisions) and the registration requirements of the Exchange Act.⁵ Since the Securities Act and the rules thereunder (other than the anti-fraud provisions) are no longer applicable to such standardized options, the Amex proposes to remove elements of the Securities Act that are

⁵ See “Exemption for Standardized Options From Provisions of the Securities Act of 1933 and From the Registration Requirements of the Securities Exchange Act of 1934; Final Rule,” Securities Act Release No. 8171 and Securities Exchange Act Release No. 47082 (Dec. 23, 2002), 68 FR 188 (Jan. 2, 2003).

embedded in Amex Rule 991. In particular, the Exchange proposes to remove all references to a “prospectus” from Rule 991. Prospectuses are no longer required for standardized options, and The Options Clearing Corporation (“OCC”) has, in fact, ceased publication of a prospectus.⁶ In addition, the proposed amendments would update and reorganize Rule 991. For uniformity, the Financial Industry Regulatory Authority, Inc. and the Chicago Board Options Exchange, Inc. have filed proposed rule amendments with the Commission to implement similar rule language and format changes.⁷

i. Deletion of Certain Provisions of Rule 991

Amex Rule 991 contains a number of references to a prospectus and other Securities Act requirements. The Exchange proposes to delete the following from Rule 991:

- Rule 991(a)(iv), which references the Securities Act prospectus definition;
- Rule 991(d), which incorporates Securities Act principles in that it prohibits written material concerning options (i.e., an offering) from being furnished to any person who has not previously or contemporaneously received the current ODD;
- Rule 991(e)(ii), which defines the term “Educational Material;”⁸
- Commentary .02A to Rule 991, which outlines what is permitted in an “Advertisement;”⁹ and

⁶ The options disclosure document (the “ODD”) prepared in accordance with Rule 9b-1 under the Exchange Act is not deemed to be a prospectus. 17 CFR §230.135b. See, e.g., Securities Act Release No. 8049 (Dec. 21, 2001), 67 FR 228 (Jan. 2, 2002).

⁷ See Exchange Act Release No. 57720 (Apr. 25, 2008) 73 FR 24332 (May 2, 2008) (SR-FINRA-2008-13) and Exchange Act Release No. 58138 (Jul. 10, 2008), 73 FR 20886 (Jul. 16, 2008) (SR-CBOE-2007-30).

⁸ This paragraph essentially incorporates language of Rule 134a under the Securities Act. While this amendment would eliminate the separate educational material category, as discussed below, the Exchange also proposes to revise the definition of Sales Literature to include educational material.

As previously noted, the provisions of current Commentary .02 to Rule 991 that outline what is permitted in an advertisement would be deleted, and the provisions relating to standards for options communications used prior to delivery of the ODD would be incorporated into proposed Rule 991(e)(ii).

Current Commentary .03 to Rule 991 regarding educational materials also would be deleted, as noted above.

Current Commentary .04 to Rule 991 sets forth the standards applicable to Sales Literature. Current Commentary .04A sets forth the requirement that Sales Literature shall state that supporting documentation for any claims, comparisons, recommendations, statistics or other technical data will be supplied upon request. The Exchange proposes to re-designate current Commentary .04A as proposed Rule 991(d)(vii).

Current Commentary .04B to Rule 991 relates to standards for Sales Literature that contain projected performance figures. Current Commentary .04C relates to standards for Sales Literature that contains historical performance figures. The Exchange proposes to re-designate current Commentary .04B as proposed Commentary .02 to Rule 991 and current Commentary .04C as proposed Commentary .03 to Rule 991.

Rule 991 currently requires that a copy of the ODD precede or accompany options related sales literature. The Exchange proposes to modify the ODD delivery requirement applicable to sales literature to provide that an ODD must precede or accompany any communication that conveys past or projected performance figures involving options or constitutes a recommendation pertaining to options.¹³

¹³ See proposed Rule 991(e)(i)(C) and proposed Commentaries .02 and .03 to Rule 991.

